

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
IN AND FOR UTAH COUNTY, STATE OF UTAH.

Cause #2888.

PROVE INSURENCE COMPANY,  
a corporation,

Plaintiff

VS.

PROVO CITY, a Municipal corporation, and PROVO BRANCH CANAL & IRRIGATION COMPANY, a corporation, et al.

Defendants.

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ANSWER OF PROVO BRANCH CANAL  
& IRRIGATION COMPANY to  
COUNTER CLAIM AND CROSS COMPLAINT  
OF PROVO CITY.

Now comes the defendant Prove Bench Canal & Irrigation Company, a corporation, defendant herein, by leave of Court first had and obtained, answers the counter-claim and cross-complaint of Prove City, a Municipal Corporation, defendant herein, and admits, denies and avers as follows:

(1) The defendant alleges as part of its answer to said counter-claim and cross-complaint all of the matters set forth and alleged in its answer and cross-complaint and counter-claim on file herein, the same as if here set forth in full.

(2) Admits the allegations contained in paragraph one.

(3) Answering paragraph two of said Counter-Claim and Cross-Complaint, admits the same, except as to that part wherein said Provo City alleges that its control and regulation of the waters of Provo City, for the purposes of supplying power to factories and to farm lands outside the municipal limits of said Provo City, has been, or is under and by virtue of the Statutory Law, and the power therein granted, which allegation this defendant denies.

(4) Answering paragraph three of said Counter-Claim and Cross-Complaint, this defendant admits that for many years last past, defendant Provo City, by means of dams and intakes placed in the natural channels of Provo River and its tributaries, and

by means of ditches, canals and conduits, has diverted, distributed and used certain quantities of the waters of said Provo River for agricultural, power, domestic culinary and general municipal purposes, but this defendant denies that the quantity of water so used has been necessary for the purposes above mentioned, or that said use has been economical and without waste and necessary, or that the continued use thereof is essential for the tillage of the lands so irrigated, for the operation and conducting of the factories and business industries, or for the maintenance and enjoyment of the homes of the inhabitants of said city.

(5) Admits the allegations of paragraph four of said Counter-Claim and Cross-Complaint.

(6) Denies, specifically and generally, the allegations contained in paragraphs five, six and seven of said Counter-Claim and Cross-Complaint.

(7) Answering paragraph eight of said Counter-Claim and Cross-Complaint, this defendant admits that on the 29th day of January, 1912, in that certain cause numbered 716, entitled Provo City, a Municipal Corporation, et al., Plaintiff vs. The West Union Canal Company, a corporation, et al., Defendants, to which said suit this defendant was a party plaintiff, a decree was made, filed and entered, but denies that said decree granted, as against this defendant, the percentage of the flow of said River as set forth in paragraphs six, seven and eight of the Counter-Claim and Cross-Complaint of said Provo City, on file herein, except as the said amounts so specified were and should continue to be necessary, when economically used, to supply the municipal needs of said defendant, Provo City.

(8) Answering paragraph eight A of said Counter-Claim and Cross-Complaint, this defendant admits that it claims the right to the use of certain waters of Provo River, as more specifically set forth in its answer on file herein, which said answer and affirmative defense therein contained are hereby referred to and made a part hereof, to the same extent and for all purposes, as though the same were specifically set out herein.

(9) Answering paragraph ten of said Counter-Claim and Cross-Complaint, this defendant denies the same so far as the allegations apply to this defendant.

(10) Further answering said Counter-Claim and Cross-Complaint, this defendant alleges that paragraphs fifteen and sixteen of the decree made and entered in the case of Provo City, a Municipal Corporation, et al. vs. West Union Canal Company, a corporation, et al. number 718, hereintofore referred to, are as follows:

XV

"That all the rights, fixed, declared and decreed herein, are founded upon appropriation of water, necessary for some beneficial uses, and that all such rights, hereby fixed, declared and decreed, are subject in their exercise, to the conditions that they are required and necessary for some beneficial use, and that all such rights are expressly subject to the limitations and conditions that such waters are used for some beneficial purpose, and are used economically without waste, and with due care, and are reasonably and fairly necessary for such use, and the quantity of the said waters of which the parties hereto are found to be the owners of the right to the use is subject to the limitations, that whenever the waters of the said river, measured as hereinbefore provided, are not sufficient to fill the canals of all of the parties hereto as they are at present constructed, the quantity of water of which the court finds them respectively to be the owner of the right to use does not exceed the carrying-capacity of their respective canals as at present constructed, when in good order and repair."

XVI

"That for the proper distribution of said water so that each of the parties hereto may receive the proportion thereof decreed to each respectively and be secured in the rights herein decreed, this court will hereafter appoint a commissioner with full power and authority to measure, control, regulate, and distribute the said waters among said parties as herein decreed, and from time to time construct or cause to be constructed such dams, weirs, and appliances as science and experience shall show are necessary to an equitable and economical distribution thereof, and it is further adjudged and decreed that this court shall, and does retain original jurisdiction of this cause for the purpose of from time to time making such further orders, rules and regulations as are necessary

for the regulation, control and distribution of said waters according to the terms of this decree, and for the purpose of compelling by further decree or otherwise the construction of such improvements, dams, weirs and appliances as may from time to time be found necessary or expedient for the proper carrying out of the terms of this decree and for the equitable and economical distribution of said waters, and for the further purpose of compelling the payment of such sums of money by either or any or all of the parties hereto for the costs and expenses of improvements and the distribution of said water, and the compensation of said commissioner, as may to the court seem just and equitable and for the further purpose of carrying the terms and provisions of this decree into full force and effect."

That under and by the terms of said decree no waters were decreed to any of the parties in said action beyond their actual necessities when said waters were economically applied to a beneficial use.

(11) That Provo City has in farm acreage a total of 2,056.68 acres, and in City lots a total of 701.65 acres, making a total area to be irrigated under said system of 2760.53 acres. That at no time since the entrance of the decree above referred, has Provo City had a larger area requiring irrigation from said system than said 2760.53 acres. That for the proper irrigation of said lands from the beginning of the irrigation season up to the 20th day of June of each and every year, Provo City does not require water in excess of one (1) second foot of water for forty-five (45) acres of land, or a continuous 61.3 second foot of water, measured at the intake of the respective canals; From June 20th to July 20th, the said lands do not require, when beneficially used, water in excess of one (1) second foot of water for each fifty-five (55) acres of land, or a total flow of fifty second feet of water during said period, and from July 20th during the remainder of the irrigation season, the said lands do not require water in excess of one (1) second foot of water for each sixty (60) acres of land, or a total flow of forty-six second feet of water for the irrigation of said land. That for all municipal purposes of said defendant, Provo City, twelve (12) second feet of water during the entire irrigation season is a sufficient quantity of water.

That at no time since the entrance of said decree above referred, has the said defendant used economically and beneficially, water in excess of the amounts above specified, and that the amounts decreed to said defendant are specifically limited to that quantity of water which the defendant can beneficially and economically use, as above specifically set forth in paragraphs fifteen and sixteen of said decree.

(12) That, whenever the commissioner appointed by this court to carry into effect the provisions of said decree, has distributed to said Provo City for all purposes, water in excess of the quantity set forth in eleven hereof as the quantity, when economically used, to meet the necessities of said Provo City, said commissioner has done so in total and wanton disregard of the provisions of paragraphs fifteen and sixteen of said decree and against the right of this defendant.

(13) That if at the time of the entering of the above mentioned decree said Provo City had a necessity for the quantity of water set forth in paragraphs five (5), six (6) and seven (7) of its said Counter-Claim and Cross-Complaint, said necessity has not existed at any time since the entering of said decree, and has, under the terms of said decree and the law of the State of Utah forfeited and abandoned the same.

WHEREFORE, defendant prays that said Provo City, under its said Cross-Complaint and Counter-Claim except its present necessities as a municipal corporation. Defendant prays for general relief and for its costs incurred herein.

*W. W. Ray & Grant C. Bagley*  
ATTORNEYS FOR  
PROVO BENCH CANAL & IRRIGATION CO.

State of Utah

Utah County.

ss

John H. Stratton, being first duly sworn upon his oath deposes and says that he is the President of the Provo Bench Canal & Irrigation Company, a corporation and verifies the foregoing pleading in its behalf; that he has read said answer and the statements therein made are true of his own knowledge, except such as are made on information and belief and these he believes to be true.

John H. Stratton

Subscribed and sworn to before  
me this 17<sup>th</sup> day of July, 1916.

J. H. Stratton

Notary Public.

My Commission expires June 18, 1920.

637

2901  
4th Dist Court  
Utah County Utah

Provo Reservoir Co  
Provo City et al

Answer of Provo Ranch  
Canal & Irrigo to answer  
Counter & Cross complaint  
of Provo City.

Received a copy of the  
within Pleading this  
18 day of July 1916

Jacob Coates.  
Attorney for Plaintiff

Jacob Coates  
Attorney for Provo City

IN DIST. COURT  
UTAH CO., UTAH.

\* FILED \*

JUL 18 1916

E. H. Palfreyman Clerk.

E. H. Palfreyman Deputy.